

# MEMO ENDORSED



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September 2, 2008

Honorable Colleen McMahon  
U. S. District Court Judge  
United States District Court  
Southern District of New York  
U.S. Courthouse  
300 Quarropas Street - Room 533  
White Plains, NY 10601

USDS SDNY  
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DATE FILED: 9/2/08

Re: *American Home Assurance Company, et al v. Altman Specialty Plants, Inc.*  
Index No. 1:08-CV-07504 (CM)

Dear Judge McMahon:

This is to request that the hearing set by Order to Show Cause for September 4, 2008, at 11:00 a.m. be rescheduled with the consent of both parties.

We represent respondent Altman Specialty Plants, Inc. ("Altman") in the above-referenced action. Altman is also the plaintiff in an action currently pending in California against the petitioners American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, P.A. (together, the "AIG Companies"). Altman is represented in that action by Roxborough, Pomerance & Nye, LLP ("RPN") of Woodland Hills, California. The California action involves allegations that the AIG Companies improperly set reserves and mishandled claims arising under workers' compensation insurance policies Altman purchased from the AIG Companies. In the action now pending before your Honor, the AIG Companies assert that those California claims are subject to a valid and binding arbitration agreement between the parties.

In the New York action, the AIG Companies obtained an Order to Show Cause on their Petition to Compel Arbitration returnable before Your Honor on Thursday, September 4, 2008. (Docket Nos. 3, 4). The Order to Show Cause requires Altman to serve its opposition by today at 5:00 p.m.

The parties conferred and agreed on an alternate briefing schedule which we respectfully request Your Honor so order. The parties propose that Altman's opposition will be due on September 23, 2008, with the AIG Companies' reply, if any, due October 2, 2008. We propose that any hearing be held at the Court's convenience the week of October 6, 2008, (but not October 9, 2008) or as soon thereafter as is convenient for the Court.

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In consideration for this schedule, Altman agrees that the AIG Companies' time to respond in the California action will not commence until ten days after the date this Court issues a ruling as to the arbitrability of the underlying dispute. Altman further agrees to join the AIG Companies in seeking a similar order in the California court. Finally, Altman agrees not to file any proactive motions in the California action until the New York court issues a ruling on the issue of arbitrability; however, Altman reserves its right to bring a motion for remand in the California action based solely on any procedural or technical defect in the filing in the Notice of Removal or the Notice of Removal itself.

Altman contends that the issues presented in the petition are complex, and based on RPN's experience in litigating similar matters, require the collection of evidence from a variety of sources, a nearly impossible undertaking given the timing of the motion and the long holiday weekend. We were not able to be retained as local counsel until late Friday, August 29, 2008, and the partner in charge of this litigation at RPN, Nicholas P. Roxborough, has been out of town and will be unavailable until September 8, 2008.

We respectfully request Your Honor so order this agreement.

Respectfully submitted,

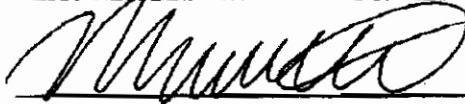
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Lillian Abbott Pfohl

Motion will be decided  
on the papers

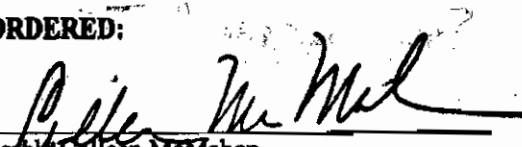
ZEICHNER ELLMAN & KRAUSE LLP



Michael Steven Davis

LAP:nlc

SO ORDERED:

  
Honorable Colleen McMahon

September 2, 2008